

I. GENERAL INFORMATION

A. Legal Authority

Federal Authority. Title 7, United States Code section 136, et seq., established the United States Environmental Protection Agency (US EPA) as responsible for administering and enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Section 26 of FIFRA specifies that for the purposes of this Act, a state shall have primary enforcement responsibility for pesticide use violations.

State Authority. Sections 11501.5, 12977, 12982, 14004, and 15201 of the California Food and Agricultural Code (FAC) specifies that the County Agricultural Commissioners (CAC) enforce the pesticide use enforcement program under the direction and supervision of the California Department of Pesticide Regulation (DPR). FAC section 2281 outlines the responsibilities of each party in joint programs. Section 11454 specifies that DPR is the successor to CDFA in enforcing pesticide laws and regulations. Title 3, California Code of Regulations (3CCR) sections 6140 and 6141 specify that DPR or the CAC may at any reasonable time, enter and inspect, interview employees and/or sample items in order to determine compliance.

Regulatory websites:

FAC: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=fac&codebody=&hits=20>

3CCR: http://www.cdpr.ca.gov/docs/inhouse/calcode/chapter_.htm

B. Responsibility

DPR and the CACs have responsibility and authority to investigate episodes that may involve potential or actual human illness or injury, property damage, loss or contamination, and environmental effects alleged to be the result of the use or presence of a pesticide (*FAC sections 408, 11501.5, 12977 and 12982* and the US EPA/DPR/County Agricultural Commissioners and Sealers Association (CACASA) Cooperative Agreement). The local CAC usually conducts these investigations. Contact the Enforcement Branch (EB) regional office for assistance in determining the appropriate investigative agency when there are: (1) Episodes involving more than one county; or (2) Conflict of interest issues such as illness of CAC staff or a complaint of county operations.

Upon request, DPR staff will provide guidance to the CAC during an investigation. DPR may also choose to be actively involved in an investigation to more closely evaluate the human health aspects of some incidents. Complete, well-documented episode investigations form the basis for taking proper enforcement actions. DPR reviews the quality of episode investigations to evaluate the effectiveness of the compliance monitoring aspect of a CAC's core enforcement program.

DPR relies upon the CAC to provide sound, factual information in the investigative report. Investigative reports are used to evaluate pesticide use patterns and are often the major avenue toward identifying broader statewide or national issues. In addition to use by the CAC and DPR,

these investigative reports receive close review and scrutiny from the Legislature, US EPA, other government agencies, and special interest groups reflecting vastly different points of view.

C. Pesticide Episode/Complaint Tracking Log

DPR assigns, numbers, and tracks all alleged pesticide related episodes that meet priority investigation criteria and all reported human effects (illness) episodes. Each year, CACs conduct, track, and file investigations of other kinds of pesticide episodes using their own unique systems. Pesticide episode investigation records provide an important source of information and access to this information is often critical to the support of our program at all levels. CACs are expected to prepare and maintain a log of their handling of those episodes/complaints that are not numbered and tracked by DPR [priority and (WH&S) reported human effects]. The format for the log is flexible (either a spread sheet or separate pages) as long as the following information is included.

- Date opened (uncovered or reported)
- Unique identification (number or name)
- Type of episode (for consistency please use effects categories similar to those used for priority investigations, use a word or two on cause or identification of property impacted if necessary, such as drift, offsite movement, spill, grapes, water, etc.)
- Pesticide(s) involved
- Location
- Violations (if any)
- Date closed.

The need for investigation data by DPR, other agencies, outside organizations, the Legislature, or the media is unpredictable in terms of scope and frequency. Unless we are prepared to recover this information, DPR and CACs, can spend large amounts of time searching individual files in an attempt to determine if investigations were conducted that involve certain pesticides, exposure scenarios, environmental effects, or situations. Enforcement Branch Liaisons (EBLs) have been requested to monitor these logs to check for regional issues that may indicate emerging issues that require DPR action.

D. Episode Notification

DPR and the CAC may receive episode notification by any of the following routes: Pesticide Illness Report (PIR); Doctor's First Report of Occupational Injury or Illness (DFROII); Citizen or Employee Complaint of Human Exposure or Unsafe Condition, either oral or written (form PR-ENF-074); other government agency referrals; notification from pest control businesses (PCB), growers, or labor contractors; Report of Loss, Nonperformance or Damage

(form PR-ENF-008); a news media account; or by observation. Health and Safety Code section 105200 (see website: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=105001-106000&file=105200-105225>) requires the physician to report pesticide illnesses to the local health officer within 24 hours. The local health officer must immediately notify the CAC of each reported illness. The CAC should establish contact with the local health department to ensure prompt receipt of these reports.

DPR routinely forwards episode reports to the CAC for investigation, unless the episode lies outside DPR/CAC jurisdiction or pertains to a situation where the FAC places primary responsibility on the Director (pesticide registration, labeling, and produce with pesticide residue). Any person alleging property loss, nonperformance or other damage as a result of a pesticide application should file a report of the damage or loss (form PR-ENF-008) with the CAC within 30 days of the occurrence or discovery of the loss (*FAC sections 11761 - 11764*).

E. Jurisdiction

1. Human Effects Episodes

DPR categorizes pesticide-related human effects exposures into two major groups, use-related and not use-related. The use pattern (such as structural, institutional, industrial, home, or agricultural), or the kind of pesticide (fungicide, antimicrobial, insecticide, or herbicide) does not affect jurisdiction or investigative responsibility (see page 4 for exceptions). Figure 1 will assist the investigator in determining jurisdiction and investigative responsibility.

Use-related (*3CCR section 6000 definition of "Use"*) pesticide exposures result from pre-application, application, and post-application activities. Examples of such activities are mixing, loading and applying pesticides (including antimicrobials), operating fork-lifts and other equipment to move fumigated commodities, workers exposed to pesticide residue in fields and offices, exposure to pesticide drift, cleaning spray equipment, etc. **The determining factor is that a pesticide use resulted in a direct or indirect exposure.**

Non-Occupational pesticide-related episodes: CAC/DPR maintain jurisdiction and investigative responsibility for all non-occupational pesticide use-related exposures. These include exposure to homeowners, bystanders, school children, etc.

Occupational pesticide use-related episodes: CAC/DPR maintain jurisdiction and investigative responsibility for occupational pesticide use-related exposures. In general, the following worker activities fall under the jurisdiction of the CAC/DPR (see Figure 1 on page 4):

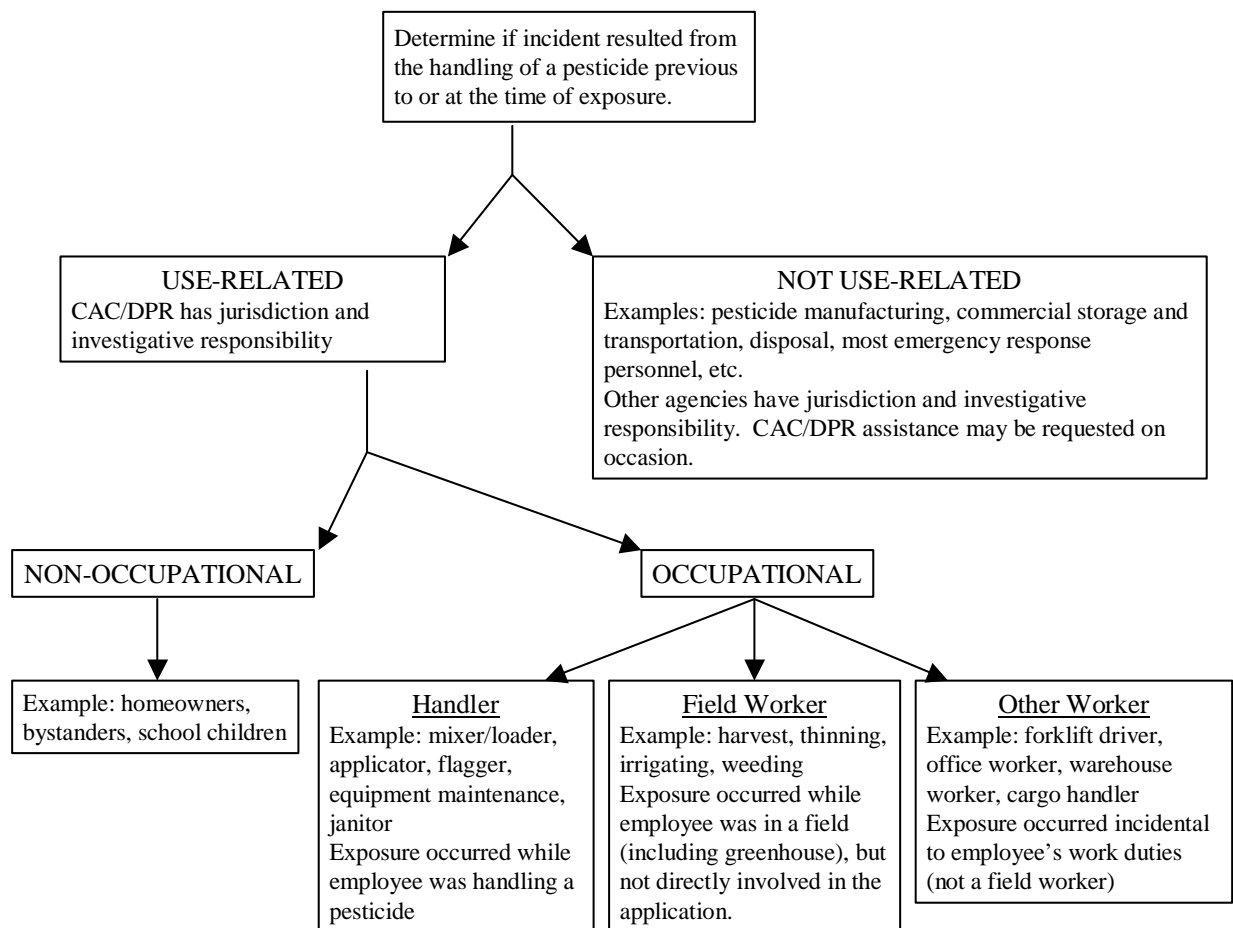
- a. Handler - Exposure occurred while an employee performed work considered to involve the handling of a pesticide (*3CCR section 6000 definition for "Handle"*) for either agricultural or nonagricultural purposes. Work activities include mixing, loading, flagging, applying, servicing, maintaining, or cleaning contaminated equipment, incorporating pesticides into the soil, handling unrinsed containers, removing tarps, and

performing the duties of a crop advisor during an application or restricted entry interval (REI).

- b. Field Worker - Exposure occurred while the employee worked in a field (including greenhouses) and was not directly involved in the handling of a pesticide. Work activities include picking, thinning, pruning, irrigating, weeding, etc. The exposure can be either to pesticide residue or drift from a pesticide application.
- c. Other Worker (Incidental Exposure) - Exposure occurred incidental to the employee's job, but resulted from someone handling a pesticide previous to, or at the time of, exposure. These work activities include office workers exposed to pesticide residue and drift from a pesticide application.

The DIR/DPR/CACASA MOU provides DIR jurisdiction for certain use situations. These are: 1) Ethylene oxide uses; 2) Inorganic arsenic used as a wood treatment; and 3) Ethylene glycol monomethyl ether uses.

Figure 1: DPR/CAC Pesticide Exposure Investigation and Jurisdiction



Non use-related pesticide exposures result from pesticide activities incidental to other tasks. Examples include pesticide manufacturing, formulating and packaging, commercial transportation and storage, emergency response situations such as fires and spills, disposal sites, etc. These exposures come under the jurisdiction of the Department of Industrial Relations (DIR) as agreed upon in the DIR/DPR/CACASA “Memorandum of Understanding (MOU) For Employee Protection at the Pesticide Workplace.” Although outside DPR/CAC jurisdiction, our involvement may be requested due to our general knowledge about pesticide hazards and overall lead agency responsibility for pesticide regulation.

DPR's Worker Health and Safety Branch (WH&S) forwards reports of illness or injury that appear to be pesticide use-related to the CAC for investigation of the circumstances of exposure. This excludes reports involving pesticides that are specifically addressed by the DIR/DPR/CACASA MOU (e.g., inorganic arsenic wood treatments, ethylene oxide and ethylene glycol monomethyl ether). **For an episode referred to a CAC and determined not to be within DPR/CAC jurisdiction, the CAC must still file a Pesticide Episode Investigation Report (PEIR) with DPR. The PEIR must include adequate information to show that the episode lies outside DPR/CAC jurisdiction.** The CAC should refer these episodes to the proper agency.

2. Non-Human Effects Episodes

Illegal Residues: DPR and the CAC hold joint responsibility for investigating pesticide residues on produce. DPR focuses on the produce in the channels of trade while the CAC focuses on how the illegal residue occurred.

Property Damage or Loss: The CAC is responsible for investigating property damage or loss resulting from the use of a pesticide. If the loss or damage is determined to be the result of contaminated or mislabeled pesticides or pesticides that contain concentrations of an active ingredient(s) that is not accurately represented by the labeling, the investigation will be conducted by DPR.

Fish and Wildlife Episodes: DPR, CACASA, and the Department of Fish and Game (DFG) through an MOU outline notification and coordination procedures to fulfill their shared responsibilities relating to the protection of fish and wildlife resources from the potentially adverse effects of pesticides.

Emergency Hazardous Materials (Pesticides) Incidents: These incidents often involve a multi-agency response. The CAC should contact the lead agency for hazardous materials within the county for direction. Although the CAC may not have any jurisdiction, the county emergency response plan may include the CAC to assist other agencies in a coordinated response.

3. Federal Facilities

Presidential Executive Order 12088 requires federal employees performing pest control on federal facilities to comply with federal, state, and local pollution control standards established pursuant to FIFRA. Federal employees must demonstrate applicator certification prior to the purchase and use of restricted use pesticides. Certification may be by the federal agency pursuant to a U. S. EPA approved program. Federal agencies must also comply with requirements on the registered pesticide label.

DPR and CACs cannot assess penalties against federal agencies or their employees for violations of state or federal law on federal facilities. Executive Order 12088 provides that U.S. EPA is responsible for dispute resolution between a federal facility and a federal, state, or local regulatory agency. The CAC should inform DPR when they find that a federal agency violated a pollution control standard (pesticide law or regulation) and fails to cooperate in the investigation or correct the problem. DPR will work with the CAC and the federal agency to resolve the problem or will forward the information to U.S. EPA for resolution.

State laws and regulations (including licensing) apply to persons who are NOT federal employees and who are hired by or under contract to a federal agency to perform pest control on a federal facility and private persons who lease or contract for the use of federal land or facilities for private activities. DPR and CACs can take action for violations of state laws against these private persons. See Appendix H for a more in depth discussion of authority on federal facilities.

4. Tribal Lands

States have no jurisdiction to enforce their laws on Native American Tribal lands unless specifically authorized by Congress to do so. Therefore, DPR and CACs cannot conduct investigations or impose penalties against persons for violations of the State's pesticide laws or regulations on Tribal lands unless there is a specific agreement with the Tribe in place.

5. Cross Jurisdictional Episodes

When the cause (application) and the effects (exposure, illness, or damage) occurs in different jurisdictions (state, country, or tribal land), follow these guidelines during the investigation as each jurisdiction has partial investigative responsibility:

- The jurisdiction suffering the effects is responsible to document the extent and seriousness of the effects and transmit that information to the jurisdiction where the application originated.
- The jurisdiction where the cause originated is responsible to investigate the circumstances of the application to determine if any laws or regulations were violated and to take appropriate enforcement action.

Communication and cooperation between the two jurisdictions is critical. DPR and US EPA should be involved whenever appropriate. Consult with your EBL whenever there is a cross jurisdictional episode.

F. Investigative Plan

Start Promptly

Initiate investigations promptly upon notification of an episode. Do not wait for a physician's report or written complaint. The physician may not file a report even though Health and Safety Code section 105200 requires it. Prompt initiation reduces the amount of investigative time needed to locate and interview people directly or indirectly involved in the episode, especially when the episode involves migratory/seasonal workers. Early witness contact improves the factual information obtained for the investigative report.

Formulate Plan

Before starting the investigation, the investigator should formulate a general investigative plan based upon the initial information provided in documents such as the PIR, DFROII, and Pesticide Episode Notification Record, or the complaint referral. **The investigative plan should focus on the circumstances of the episode and any potential violations, as well as the kinds of evidence needed to prove the violations.** In developing the plan, the investigator must consider such things as type of episode, priority status, elapsed time since occurrence, collection of evidence, and resources needed.

The investigative plan should briefly:

1. List the potential violations by element.
2. List persons who need to be interviewed (by role, e.g., applicator, supervisor, injured person, bystander, etc.).
3. List the type and number of samples to be collected.
4. List other evidence necessary to prove particular elements of violations (e.g., Restricted Materials Permit, Notice(s) of Intent (NOI), and Pesticide Use Report(s), training records, diagrams, photographs, etc.).
5. List probable inspection activities (e.g., headquarters inspection).
6. Summarize the findings of fact to date, and planned activities.
7. List of persons who need to be provided with periodic updates.
8. Address agreements with other agencies and legal mandates.

Amend the Plan

As the investigation proceeds, amend the plan as you gather new evidence. An up-to-date plan usually has all of the information necessary to provide preliminary findings of the priority episode investigation to the regional offices within 15 days of notification.

To determine current safety conditions, consider performing appropriate inspections in conjunction with the investigation.

G. Timely Submission of Episode Investigation Reports

For non-priority illness investigations, DPR requires the CAC to submit the completed PEIR to WH&S within 120 calendar days of WH&S assigning a case number. For priority investigations, the US EPA/DPR/CACASA Cooperative Agreement allows the CAC to establish the completion date. DPR recognizes that a small number of episodes cannot be completed within the established time frames due to circumstances beyond the control of the investigator. For these episodes, the CAC must notify the EBL on form PR-ENF-097 explaining why the non-priority episode investigation cannot be completed within 120 days or the priority episode investigation cannot be completed by the CAC established date. The CAC must also specify the additional length of time needed to complete the investigation. The EBL must approve the extension. Criteria for obtaining an extension include:

1. The injured person is unavailable for an extended period, but is expected to be available for an interview at a later date. Specify the approximate date on the form.
2. Samples have been sent to an analytical laboratory that is unable to return the results for an extended period of time.
3. There is a delay in obtaining medical records or coroner reports.

Do not delay the submission of the investigative report because of pending enforcement action. Provide the status and nature of the proposed action in the investigative report and submit a Pesticide Enforcement Compliance Action Summary (PR-ENF-046) with the Pesticide Regulatory Activities monthly reports (PRAMR) to the Enforcement Branch after completing the action. Be sure to include the DPR priority investigation number (if applicable) and the WH&S case number on the form.

WH&S receives medical reports (PIRs and DFROIs), enters them into a computer database within two working days, and sends them to the appropriate CAC. Upon receipt of the completed PEIR from the CAC, WH&S records the received date in the database. WH&S sends a monthly printout of episodes logged to each county. The printout includes all assigned cases for the year, including cases with completed investigative reports. DPR uses these dates to determine the length of time the CAC took to complete the episode investigation. The EBL will use this information when preparing the CAC's evaluation.

Prior to forwarding an episode to another CAC for investigation, please notify WH&S. The database record will be updated to reflect the change in the investigating CAC.

DPR reviews the investigative reports for completeness and appropriate enforcement action. DPR will request the CAC provide additional information for any report submitted with inadequate information. The time clock stops upon receipt of the investigative report by DPR. The time clock starts again when DPR returns the investigative report to the CAC for additional information.